IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.59 OF 2003
With
Civil Application No.50 of 2003

1. Parshuram Bapu Chavan & Anr. .. Appellants.
Vs
1. Aba Dada Khandekar and ors. .. Respondents.

Mr S.P.Thorat, for the appellants.
Mr Rupesh Bobade, for the respondents.

CORAM : D.B.BHOSALE,J.
DATE : 09.01.2007.

PC:

1. Heard the learned counsel for the parties.

2. This appeal is directed against the concurrent findings recorded by the courts below. The appellants are the original defendant nos 7 and 8 in a suit, bearing R.C.S.no.283 of 1987, filed by respondent no.1 for partition and separate possession of his share in the land at Gat Nos.44 and 56. The suit was decreed by the trial Court vide its judgment dated 12.10.2000 and in appeal filed by the appellants the decree came to be confirmed vide judgment and order dated 11.9.2002. Insofar as the appellants are concerned, they were aggrieved by paragraph nos 3 and 4 of the operative portion of the judgment and order dated 12.10.2000 passed by the trial Court. Paragraphs 3 and 4 read thus :

"3. It is hereby declared that plaintiff has 4

anna 4 paise share and defendants no.7 and 8 have 11 anna 8 paise share in the land Gat no.56.

4. Gat No.56 be partitioned by metes and bounds through Competent Revenue Authority under section 54 of Civil Procedure Code and plaintiffs 4 anna 4 paise share be separated and be given in his possession."

3. Mr Thorat, learned counsel for the appellants, submitted that the decree passed in the present suit, that is R.C.S.No.283 of 1987, is inconsistent with the decree passed in R.C.S.No.99 of 1992 and, therefore, cannot be sustained in law and deserves to be set aside. I perused the impugned judgments as also the judgment and decree dated 31.12.1992 passed in R.C.S.No.99 of 1992. It appears that R.C.S.No.99 of 1992 was filed by the appellants along with one Sukhadeo Ramchandra More against respondent no.1-plaintiff and other respondents, in the present proceedings, for perpetual injunction, restraining them from interfering with the appellants possession over Gat No.56. In the said suit the defendants, including respondent no.1- plaintiff in the present suit, were restrained from interfering with the possession of the appellants over the suit land Gat No.56. That suit was decreed exparte since the defendants, including the present respondent-plaintiff, remained absent. In view of this decree, Mr. Thorat vehemently submitted that, in any case, the present suit cannot be decreed as there will be inconsistent decrees.

In the present suit respondent no.1-plaintiff prayed for partition and possession of 11 anna and 8 paise share in Gat no.56, being the purchasers of the portion of the said land. Admittedly, the appellants have only 4 anna and 4 paise share in Gat no.56. It is clear from the observations made in paragraph 9 of the judgment of the trial Court dated 12.10.2000 that neither the appellants nor respondent no.1-plaintiff have/has disputed their shares in Gat no.56 to the extent of 11 anna 8 paise and 4 anna 4 paise respectively. In view thereof the courts below have decreed the suit in favour of the respondent-plaintiff and kept the share of the appellants to the extent of 11 anna 8 paise in Gat no.56 in tact. The appellants do not claim anything more than what has been allotted by the impugned decree, insofar as Gat no.56 is concerned. Merely because the earlier suit being R.C.S.No.99 of 1992 for perpetual injunction was decreed, that by itself would not take away the right of respondent no.1-plaintiff from filing a suit for partition and seeking possession of his share in the property. The suit filed by respondent no.1-plaintiff, in my opinion, cannot be said to be illegal. I find no merit in the appeal. No other submission was advanced except the one referred to above. Hence, this appeal deserves to be dismissed. Order accordingly. As a consequence thereof, the civil application is disposed

of.

(D.B.BHOSALE,J.)